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State v. Walton Appellant's Brief Dckt. 45015

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	NO. 45015
Plaintiff-Respondent,)	
)	ADA COUNTY CASE NO. CR01-17-176
v.)	
)	
TYLER JAMES WALTON,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	
<hr/>)	

STATEMENT OF THE CASE

Nature of the Case

Tyler James Walton appeals from the district court's Judgment of Conviction and Order of Commitment. Mr. Walton was sentenced to a unified sentence of seven years, with two years fixed, for his possession of a controlled substance conviction. He asserts that the district court abused its discretion in sentencing him to an excessive sentence without giving proper weight and consideration to the mitigating factors present in his case.

Statement of the Facts & Course of Proceedings

On January 8, 2017, an Information was filed charging Mr. Walton with possession of a controlled substance, petit theft, eluding, resisting and/or obstructing an officer, possession of

marijuana, and possession of drug paraphernalia. (R., pp.35-37.) The charges were the result of a report to police that Mr. Walton had taken several items from a Wal-Mart. (PSI, p.3.)¹ When he was contacted by police, he fled. (PSI, p.3.) After being detained, several narcotic related items were located on his person. (PSI, p.3.)

Mr. Walton entered a guilty plea to the possession of a controlled substance charge and the remaining charges were dismissed. (R., pp.42, 57.) At sentencing, the prosecution requested imposition of a seven year sentence, with two years fixed. (Tr., p.16, Ls.19-21, p.18, Ls.2-4.) Defense counsel requested a unified sentence of five years, with six months fixed. (Tr., p.22, Ls.20-22.) The district court imposed a unified sentence of seven years, with two years fixed. (R., pp.57.59.) Mr. Walton filed a timely Notice of Appeal. (R., pp.60-61.) Mr. Walton also filed a timely Rule 35 motion. (Augmentation: Motion for Reconsideration of Sentence.)² The motion was denied.³ (Order Denying Motion for Reconsideration Under ICR 35.)

ISSUE

Did the district court abuse its discretion when it imposed, upon Mr. Walton, a unified sentence of seven years, with two years fixed, following his plea of guilty to possession of a controlled substance?

¹ For ease of reference, the electronic file containing the Presentence Investigation Report and attachments will be cited as “PSI” and referenced pages will correspond with the electronic page numbers contained in this file.

² A Motion to Augment was filed contemporaneously with this Appellant’s Brief.

³ The denial of the Rule 35 Motion is not challenged on appeal because there was no new or additional information provided in support of the motion as is required by *State v. Huffman*, 144 Idaho 201, 203 (2007).

ARGUMENT

The District Court Abused Its Discretion When It Imposed, Upon Mr. Walton, A Unified Sentence Of Seven Years, With Two Years Fixed, Following His Plea Of Guilty To Possession Of A Controlled Substance

Mr. Walton asserts that, given any view of the facts, his unified sentence of seven years, with two years fixed, is excessive. Where a defendant contends that the sentencing court imposed an excessively harsh sentence, the appellate court will conduct an independent review of the record giving consideration to the nature of the offense, the character of the offender, and the protection of the public interest. *See State v. Reinke*, 103 Idaho 771 (Ct. App. 1982).

The Idaho Supreme Court has held that, “[w]here a sentence is within statutory limits, an appellant has the burden of showing a clear abuse of discretion on the part of the court imposing the sentence.” *State v. Jackson*, 130 Idaho 293, 294 (1997) (quoting *State v. Cotton*, 100 Idaho 573, 577 (1979)). Mr. Walton does not allege that his sentence exceeds the statutory maximum. Accordingly, in order to show an abuse of discretion, Mr. Walton must show that in light of the governing criteria, the sentence was excessive considering any view of the facts. *Id.* (citing *State v. Broadhead*, 120 Idaho 141, 145 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385 (1992)). The governing criteria or objectives of criminal punishment are: (1) protection of society; (2) deterrence of the individual and the public generally; (3) the possibility of rehabilitation; and (4) punishment or retribution for wrongdoing. *Id.* (quoting *State v. Wolfe*, 99 Idaho 382, 384 (1978), *overruled on other grounds by State v. Coassolo*, 136 Idaho 138 (2001)).

Appellate courts use a three-part test for determining whether a district court abused its discretion: (1) whether the court correctly perceived that the issue was one of discretion; (2) whether the court acted within the outer boundaries of its discretion and consistently with the

legal standards applicable to the specific choices available to it; and (3) whether it reached its decision by an exercise of reason. *State v. Stevens*, 146 Idaho 139, 143 (2008) (citing *Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94 (1991)). Mr. Walton asserts that the district court failed to give proper weight and consideration to the mitigating factors present in his case and, as a result, did not reach its decision by an exercise of reason.

Specifically, Mr. Walton asserts that the district court failed to give proper consideration to his admitted substance abuse problem and desire for treatment. Idaho courts have previously recognized that substance abuse and a desire for treatment should be considered as a mitigating factor by the district court when that court imposes sentence. *State v. Nice*, 103 Idaho 89 (1982). Mr. Walton began using alcohol at the age of thirteen and illegal substances in his mid-teens. (PSI, p.12.) Although he has been previously provided with treatment, he acknowledges that further treatment is necessary and he is willing to participate fully. (PSI, p.13.) It was recommended that he participate in Level 2.1 Intensive Outpatient Services. (PSI, pp.15, 29.)

Idaho courts have previously recognized that Idaho Code § 19-2523 requires the trial court to consider a defendant's mental illness as a sentencing factor. *Hollon v. State*, 132 Idaho 573, 581 (1999). Mr. Walton has been diagnosed with Rule Out: Major Depressive Disorder, Recurrent, Severe; Rule Out: Generalized Anxiety Disorder; Rule Out: Posttraumatic Stress Disorder; and Rule Out: Attention-Deficit/Hyperactively Disorder – Predominantly inattentive presentation. (PSI, pp.20, 31.) He reports that he is stable when he is on medication, Effexor, and wants to be medicated and address his mental health issues. (PSI, p.11.) It was recommended that he participate in therapy and be provided medication management. (PSI, p.33.)

Furthermore, in *State v. Shideler*, 103 Idaho 593, 594 (1982), the Idaho Supreme Court noted that family and friend support were factors that should be considered in the Court's decision as to what is an appropriate sentence. *Id.* Mr. Walton has the support of his family and fiancé. Both Mr. Walton's mother, Leslie Cooper, and his fiancé, Heather Hart, contacted the presentence investigator to discuss their support of Mr. Walton. (PSI, p.175.) Ms. Hart noted that she has been reaching out to other church members to provide additional support for Mr. Walton upon his release. (PSI, p.175.) She also noted that Mr. Walton "is a wonderful man" and that she "will stick by him." (PSI, p.175.)

Additionally, Mr. Walton has expressed his remorse for committing the instant offense. In *State v. Alberts*, 121 Idaho 204 (Ct. App. 1991), the Idaho Court of Appeals reduced the sentence imposed, "In light of Alberts' expression of remorse for his conduct, his recognition of his problem, his willingness to accept treatment and other positive attributes of his character." *Id.* 121 Idaho at 209. Mr. Walton has expressed his remorse for committing the instant offense stating, in his PSI statement to the district court, that:

I know there are consequences to every action, that what I did was wrong that doing drugs will effect my loved ones and myself negatively, and effect peoples lives around me. I also know if I was taking my meds I would nave made these decisions. However I do not know how to express to the court how drastically my mental health, therefore my choices, are affected by not taking my meds. Every single time I caused or got in trouble I ran out of my meds and didn't worry about it which is a pattern I'm recognizing. To address these issues I, along With my Wife, have contacted the Terry O'Reilly clinic to continue my medication when released and to get a primary physician to consult about these medications regularly and have a letter of acceptance upon release I know I have the tools, the support group, and the resources to be successful, I just need the actual practice in the community using those tools, while properly medicated, for a long enough time for these proper beliefs to become habits so as to be successful on parole in the community. I want help to be a success for not only me but for my family and loved ones. More than anything I'd like to say I'm sorry because of what could have happened, to the people around me, and myself because I could have hurt someone. Thank you. [sic]

(PSI, p.14.) He again expressed his remorse at the sentencing hearing noting:

Your Honor, while I was down I know I made some terrible decisions. I made some good ones as well. You Know, I surrounded myself with sober friends and tried to reconnect with family. I was trying. I really was. I know it doesn't really seem like it.

But I quit taking my meds and that was the worst decision I could have made as you can see. I have done everything I can to set myself backup when I get back out. But I do want [to] say that I [have] never had such a good support group, a good network of friends and family here to support me when I get out.

And I do want to apologize because I have been given chances. And [I] haven't utilized [them] to the best of my ability. I am asking for another chance. That's all, Your Honor.

(Tr., p.23, L.10 – p.24, L.1.)

Based upon the above mitigating factors, Mr. Walton asserts that the district court abused its discretion by imposing an excessive sentence upon him. He asserts that had the district court properly considered his substance abuse, desire for treatment, mental health issues, friend and family support, and remorse, it would have crafted a less severe sentence.

CONCLUSION

Mr. Walton respectfully requests that this Court reduce his sentence as it deems appropriate. Alternatively, he requests that his case be remanded to the district court for a new sentencing hearing.

DATED this 27th day of December, 2017.

_____/s/_____
ELIZABETH ANN ALLRED
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 27th day of December, 2017, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing a copy thereof to be placed in the U.S. Mail, addressed to:

TYLER JAMES WALTON
INMATE #100438
ISCI
PO BOX 14
BOISE ID 83707

DEBORAH A BAIL
DISTRICT COURT JUDGE
E-MAILED BRIEF

BRIAN C MARX
ADA COUNTY PUBLIC DEFENDER
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

EAA/eas